

Financial reporting obligations for a company limited by guarantee

Information for companies limited by guarantee

This information sheet covers:

- ▶ Who is responsible for overseeing your organisation's finances;
- ▶ What financial records your organisation has to keep; and
- ▶ What kind of financial information you need to provide at your AGM and to ASIC.

Who is responsible for overseeing our organisation's finances?

The golden rule is that the directors (board) of a company limited by guarantee are ultimately responsible for managing the finances of the organisation.

There are a number of provisions in the *Corporations Act 2001* (Cth) that make this clear, as well as a lot of case law on this issue.

The Corporations Act provides that:

- ▶ the business of a company is to be managed by or under the direction of the directors; and
- ▶ the directors may exercise all the powers of the company except any powers that the Act or the company's constitution (if any) requires the company to exercise in general meeting.

The Corporations Act also sets out legal duties that all directors of a board must comply with, including:

- ▶ a duty to exercise reasonable care and skill in managing the affairs of the organisation (including the financial affairs); and
- ▶ a duty to prevent insolvent trading by the company.

For more information about the duties of board members of a company limited by guarantee, see PilchConnect's *Guide to the Legal duties of Committee and Board members of Community Organisations* at www.pilch.org.au/govguide.

Can't we just leave all this financial stuff to the Treasurer?

No - if you are a director on a board, the law is clear that all board members are responsible for managing the company's finances.

The treasurer (or financial officer – or whatever other name is given to the position) is generally charged with the task of ensuring that financial transactions are properly recorded and reported on. The treasurer presents financial reports at board meetings. It is important that these reports are easily understood by all the board members because they are *all* responsible for keeping a check on the finances of the organisation.

While the treasurer may not be able to do all these daily duties personally, it is the responsibility of the treasurer to ensure that good systems are in place to allow these tasks to be done efficiently and in a foolproof manner.

Other tasks of the treasurer may include:

- ▶ making sure finances are well planned by preparing an annual budget and then regularly monitoring this budget to see that the organisation is staying within it;
- ▶ making sure that the books are up to date and in order – this means that there is a proper record of all payments and money received, and that accounts are reconciled at least once a month;
- ▶ taking reasonable steps to make sure that the organisation's finances are arranged so as to prevent funds from being stolen or misused; and
- ▶ ensuring that the necessary information and account books are ready for a financial statement to be prepared (and if necessary reviewed or audited) at the end of the year.

What financial records does our organisation have to keep?

Every community organisation must maintain adequate and accurate accounting records of its financial transactions.

The Corporations Act requires that a company must keep written financial records that correctly record and explain its transactions, financial position and performance, and enable true and fair financial statements to be prepared and audited. These records must be kept for 7 years.

'Financial records' are defined in the Corporations Act as including:

- ▶ invoices, receipts orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- ▶ documents of prime entry;
- ▶ working papers and other documents needed to explain the methods by which financial statements are made up; and
- ▶ adjustments to be made in preparing financial statements.

For more information about the kind of records a company should keep, your organisation should seek professional accounting advice.

The regulator for companies limited by guarantee, the Australian Securities and Investments Commission (**ASIC**) have a guidance note called *What books and records should my company keep?* which provides some basic background information (see Resources below).

What kind of financial information do we need to provide at the Annual General Meeting (AGM)?

The Corporations Act was amended on 28 June 2010 to introduce new measures designed to reduce the financial reporting burden on smaller companies limited by guarantee. Under the previous reporting regime, all companies limited by guarantee were required to have their accounts audited by a registered company auditor.

As of (and including) the financial year ended 30 June 2010, companies limited by guarantee have varying levels of financial reporting/auditing obligations, depending on which 'category' or 'tier' they fit into. There are three categories, defined by reference to the size of the company's annual revenue and whether they are endorsed as a Deductible Gift Recipient (**DGR**) for tax purposes. For information on DGR status, go to www.pilch.org.au/DGR.

Below is a table which sets out the categories and their minimum reporting obligations.

Tier	Definition	Financial reporting requirement
Tier 1	Companies limited by guarantee with annual revenue less than \$250,000 without DGR status	<ul style="list-style-type: none"> ▶ No financial report required (unless requested by 5% of members or by ASIC) ▶ No Director's report required (unless requested by 5% of members or by ASIC) ▶ No audit/review of accounts required (unless requested by 5% of members or by ASIC)
Tier 2	Companies with annual revenue less than \$250,000 with DGR status - or - Companies with annual revenue over \$250,000 but less than \$1 million (with or without DGR status)	<ul style="list-style-type: none"> ▶ Required to produce a financial report which can be 'reviewed' instead of audited * ▶ Required to produce a 'streamlined' Director's report (less detailed than a full Director's report) ▶ Members to be notified of annual reports (rather than automatic distribution)
Tier 3	Companies with annual revenue over \$1 million (with or without DGR status)	<ul style="list-style-type: none"> ▶ Required to produce an audited financial report ▶ Required to produce a 'streamlined' Director's report (less detailed than a full Director's report) ▶ Members to be notified of annual reports (rather than automatic distribution)

**A 'review' is less onerous than an audit, and can be conducted by an accountant with a practicing certificate issues by the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants - ie. the person does not have to be a registered company auditor.*

Remember, these are minimum financial reporting requirements for a company limited by guarantee. Companies that fall into the lower categories can choose to report at a higher level than they are required to (eg. 'category 1' or 'tier 2' companies can continue to have their accounts audited). Even for 'tier 1' companies, it is good governance to prepare (at least) a financial report and present it to members at the AGM.

There are various time provisions and deadlines which apply to the provision of the financial report to members / tabling requirements. Your organisation should ensure that it understands and complies with these timeframes to avoid penalties.

Also, it is important to keep track of your company's annual revenue so that you can assess its reporting obligations from year to year. If your organisation makes more (or less) in a particular year, or obtains DGR status, it may fall into a different reporting tier.

What financial information needs to be provided to ASIC?

The Australian Securities and Investments Commission (ASIC) is the regulator of all companies limited by guarantee in Australia. The Corporations Act requires companies to report to ASIC by lodging its financial, Director's and auditor's reports of a review or audit (if required) and an annual 'review fee' at the end of every financial year.

Companies limited by guarantee may be eligible for a reduced annual review fee if it meets the criteria under the definition of 'special purpose company' in the Corporations (Review Fees) Regulations 2003 (Cth).

A company is also required to review a statement of its company's details which will be sent to them by ASIC and to notify ASIC of any changes to the details.

Timeframes for lodging these documents are strictly enforced and penalties apply for late filing. For more information about reporting to ASIC – see Resources below.

Resources

Legislation

Corporations Act 2001 (Cth)

Australian Securities and Investment Commission (ASIC)

► [ASIC - What books and records should my company keep?](#)

This ASIC guidance note is written primarily for directors of small proprietary companies but may be a useful guide to basic financial record-keeping requirements.

► [ASIC - Annual statements](#)

This ASIC page provides basic information about the lodgement of annual statements. It is not specifically written for companies limited by guarantee and your organisation may wish to seek specialist advice on reporting requirements.

► [ASIC - Financial reports](#)

This page of the ASIC website has information about financial reporting (for all types of companies).

Other

▶ [Institute of Chartered Accountants \(ICA\) - Enhancing not-for-profit annual and financial reporting](#)

The ICA has a guide on annual and financial reporting.

▶ [Chartered Secretaries Australia \(CSA\) - Financial reporting guides](#)

The CSA has a series of good governance guides, which includes information on financial reporting. They also provide a pro bono program to assist with things like governance audits, board paper templates and annual report preparation. Contact CSA for their guidelines on when a group is eligible for this free assistance.

▶ [CPA Australia - Financial Management of not-for-profit organisations](#)

CPA has a toolkit with two guides relevant to not-for-profit management.

▶ [QUT - Approving financial statements](#)

The Australian Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology has a resource on nonprofit governance which includes a page on approving financial statements.